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Supreme Court, U.S.
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(1)

No._____

IN THE

Supreme Court of the United States

MARGUERITE EVANS WILLNER
AND
MICHAEL A. WILLNER
Petitioners,

v.

JOHN T. FREY, CLERK, FAIRFAX COUNTY
CIRCUIT COURT
AND
COMMONWEALTH OF VIRGINIA
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman* doctrine bars federal court subject matter jurisdiction over a federal claim which was not adjudicated in state court, does not seek review and rejection of the state-court judgment on the merits, and complains of an injury caused by the actions of a third party and not by the judgment itself, but is inextricably intertwined with the state-court judgment such that it requires review of the state court's ruling and seeks to effectively undo the relief granted thereunder.

PARTIES TO THE PROCEEDING

Petitioners Marguerite Evans Willner and Michael A. Willner were plaintiffs-appellants below.

Respondent John T. Frey, Clerk, Fairfax County Circuit Court, was the defendant-appellee below.

Respondent Commonwealth of Virginia was the intervenor below.

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DECISIONS BELOW

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JURISDICTION

The judgment for the court of appeals was entered August 3, 2007. The court denied appellants' petition for rehearing and rehearing *en banc* on August 29, 2007. App. 44a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Just Compensation Clause of the Fifth Amendment, also referred to as the Takings Clause, provides "... nor shall private property be taken for public use, without just compensation." U.S. Const., Amdt. 5.

The Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983 provides in part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United

States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

28 U.S.C. § 1257 vests the U.S. Supreme Court with "jurisdiction over appeals from final state-court judgments."

28 U.S.C. § 1331 vests the U.S. district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

STATEMENT OF THE CASE

A. Introduction

A split among the Circuits concerning the interpretation of the *Rooker-Feldman* doctrine has led to the evisceration of the Civil Rights Act[1] in jurisdictions where the courts have expanded the doctrine's reach, as in the present case, contradicting the Supreme Court's mandate to limit its scope. Despite Justice Stevens' observation that the Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), "finally interred the so-called '*Rooker-Feldman* doctrine,'" *Lance v. Dennis*, 546 U.S. 459, 468 (2006) (Stevens, J., dissenting), and the fact that the Court in *Lance* "quite properly

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[1] The Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983

disapprove[d] of the District Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years," *Id.*, a number of Circuits broadly interpret the doctrine to bar jurisdiction to hear certain federal claims that have not been adjudicated in state court and do not seek review and rejection of a state-court judgment on the merits.

"[T]he Supreme Court of the United States is the only federal court that may properly exercise appellate jurisdiction over state court judgments." *E. Hill Synagogue v. City of Englewood*, 2007 U.S. App. LEXIS 17108 (3d Cir. 2007). Under the *Rooker-Feldman* doctrine "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994). That the *Rooker-Feldman* doctrine is meant to occupy "narrow ground," is evidenced by the fact that the Supreme Court has only applied the doctrine twice -- in the two cases after which the doctrine was named. *McKithen v. Brown*, 481 F.3d 89, 96 (2d Cir. 2007).[2]

"Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts..." *Exxon Mobil Corp. v. Saudi Basic*

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[2] Petition for certiorari filed (Sep. 12, 2007) (No.07-350).

Indus. Corp., supra, 544 U.S. at 283. The Court in *Exxon* attempted to reign in *Rooker-Feldman* by holding that it, "...is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court *review and rejection* of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra,* 544 U.S. at 284 (emphasis added).

The expansive application of *Rooker-Feldman* by a number of Circuits is a major blow to enforcement of the federally protected rights of individuals against all forms of official violations under 42 USC § 1983. See *Dennis v. Higgins*, 498 U.S. 439, 443 (1991). The "very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights," *Woodford v. Ngo*, 126 S. Ct. 2378, 2396 (2006), citing *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

One major culprit responsible for the doctrine's broad application is the "inextricably intertwined" analysis. First used in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983), it is a staple in some Circuits, each with its own interpretation, while shunned in others. It should be shunned in all of them. "*Feldman*, a nonunanimous, 25-page opinion written by Justice Brennan in 1983, was incorrectly decided and generated a plethora of confusion and debate among scholars and judges." *Lance v. Dennis, supra,* 546 U.S. at 467 (Stevens, J., dissenting).

The Ninth Circuit has applied the test to support a *Rooker-Feldman* dismissal in at least 15 cases since *Exxon* was decided less than three years ago, the vast majority of which were unpublished opinions with little or no explanation as to why or how the test was met. App. 46a. By comparison, this Court has never applied *Rooker-Feldman*, let alone the inextricably intertwined analysis, to dismiss an action for want of jurisdiction since its decision in *Feldman* 24 years ago.

There is a split among the Circuits as to the application of the "inextricably intertwined" test. The Sixth Circuit has expressly abandoned it and the Second, Third, Seventh, and Eleventh Circuits have interpreted it narrowly. The Fifth and Ninth Circuits, however, have broadly applied it to support dismissal of federal claims that were not adjudicated in state court and did not challenge a state-court judgment on the merits

There is also a split among the Circuits regarding the interpretation of the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test. The Ninth and Tenth Circuits have interpreted it to dismiss a federal claim that "would reverse or undo the relief granted" by the state-court or "undercut" the state-court ruling. This contradicts *Exxon*, however, where the Court held that a federal district court has jurisdiction over a plaintiff's independent claim even if it contradicts a state-court's ruling. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp, supra,* 544 U.S. at 293.

Consistent with the ruling in *Exxon*, the Second Circuit has expressly disavowed a relief-centric interpretation of "review and rejection" and, along with the Seventh, Eighth, and Eleventh Circuits, has ruled instead that *Rooker-Feldman* applies only to federal claims which seek to adjudicate the merits of the state court case.

The First, Second, and Sixth Circuits have also applied an injury-centric approach ruling that *Rooker-Feldman* bars jurisdiction when the federal plaintiff alleges an injury resulting from the state-court judgment itself and not from the actions of a third party. This approach, however, allows for the possibility that a federal suit which does not challenge a state court's rulings on the merits may still be barred.

The Fourth Circuit in this case barred jurisdiction under *Rooker-Feldman* by applying both the "inextricably intertwined" analysis and the "review and rejection" requirement in an overly expansive manner. It held that the Willners' federal claim was so "inextricably intertwined" with a state-court case that it required the district court to "review" the state court's ruling. *Willner v. Frey*, 2007 U.S. App. LEXIS 18514 (4th Cir. 2007). It also concluded that their claim sought to "reject" the state-court judgment because it sought to reverse the relief granted thereunder.

Glaringly, the Fourth Circuit did not address the fact that the state court did not adjudicate the Willners' federal claim or the fact that the Willners are not asking the federal court to adjudicate the

merits of the state court case. The Fourth Circuit also erroneously concluded that the Willners complained of an injury caused by the state-court judgment, when in fact, as a matter of law, the constitutional injury of which they complain was caused by the actions of a third party. Given these facts, the Willners' claim would not have been dismissed under *Rooker-Feldman* as interpreted by seven of the Circuits.

Applying *Rooker-Feldman* to bar jurisdiction over federal claims that have not been heard in state court has the potential to greatly weaken the Civil Rights Act, hobbling the federal protection of federal constitutional rights. 74 Notre Dame L. Rev. 1175, 1186 (1999). The case at bar provides this Court with an excellent opportunity to establish a bright-line rule for the application of *Rooker-Feldman* (or as Justice Stevens would argue, *Rooker sans Feldman*) by expressly abandoning the "inextricably intertwined" analysis and clarifying the "review and rejection" element of *Exxon*'s *Rooker-Feldman* test to bar jurisdiction over only those federal claims that seek to adjudicate the merits of a state-court case.

B. Factual Background and Procedural History

Marguerite and Michael Willner owned a strip of land in Fairfax County, Virginia, the "Disputed Property," which their neighbors, the Leggetts, claimed by adverse possession. The Leggetts filed suit (hereinafter referred to as "*Fairfax I*") in state court to eject the Willners from the Disputed Property. The Leggetts knew, and never objected to

the fact, that the Willners had a recorded deed to the Disputed Property and were paying taxes on it. Furthermore, the Willners had not abandoned the Disputed Property and accessed it freely.

Nevertheless, the state court ruled that the Leggetts met the elements of adverse possession and ordered that title to the Disputed Property be taken away from the Willners and given to the Leggetts. As explained below (*infra*, pp. 27-28), the Willners did not and could not, as a matter of law, raise a Just Compensation Clause claim under the Fifth Amendment to the U.S. Constitution in *Fairfax I*, consequently the state court did not address it. A copy of the order was filed in the county land records which are maintained by the clerk of the court, John T. Frey, the defendant in the present suit. Neither Frey nor the Commonwealth of Virginia were parties to *Fairfax I*. The Willners' petition for appeal to the Virginia Supreme Court was denied and they did not file a petition for writ of certiorari to the U.S. Supreme Court.

The Willners subsequently filed suit against the Commonwealth in state court ("*Fairfax II*"), challenging the law of adverse possession as applied on state constitutional grounds and sought just compensation for the taking of their property. The Commonwealth demurred, arguing that its adverse possession law as applied violated neither the Virginia Constitution nor the United States Constitution. The state court sustained the Commonwealth's demurrer, dismissing the Willners' suit with prejudice, but expressly refused to comment on any federal implications.

The Willners' Just Compensation claim was now ripe, so they filed the present suit in federal court seeking a declaratory judgment that the Commonwealth had violated the Willners' federal constitutional rights when it refused to compensate them for the taking of their title to the Disputed Property, among other claims. The Willners argue that the order in *Fairfax I*, by which the government took the Willners' title to their land, became invalid when the Commonwealth denied them compensation for the taking. Consequently, they seek to effectively retrieve their title by enjoining Frey to remove the order from the land records.

The district court dismissed the Willners' suit under *Rooker-Feldman*, among other theories, holding that their claim was "inextricably intertwined" with the state-court judgment in *Fairfax I* and because they sought removal of the state court order from the land records, they were, according to the court, asking it to reject the state-court judgment. *Willner v. Frey*, 421 F. Supp. 2d 913, 923 (E.D. Va., 2006). The Willners appealed the decision to the Fourth Circuit, which allowed the Commonwealth of Virginia to intervene. The Fourth Circuit affirmed the district court's dismissal and subsequently denied the Willners' petition for rehearing.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE RULINGS OF SEVEN CIRCUITS AND IS REPRESENTATIVE OF A SPLIT IN THE CIRCUITS REGARDING THE *ROOKER-FELDMAN* DOCTRINE, A BROAD INTERPRETATION OF WHICH UNDERMINES THE CIVIL RIGHTS ACT AND CONFLICTS WITH THE SUPREME COURT'S DECISIONS IN *EXXON* AND *LANCE*

This petition should be granted because the overly broad interpretation of *Rooker-Feldman* applied by a number of Circuits to bar federal court jurisdiction over federal claims is undermining the Civil Rights Act by closing the federal courts to complaints against state officials. The Fourth Circuit's decision in the instant case highlights two major problems which this Court's decisions in *Exxon* and *Lance* did not solve, *i.e.*, overly broad interpretations of both the "inextricably intertwined" analysis and the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test. This case presents the Court with a much-needed opportunity to further clarify *Rooker-Feldman* so that it is only applied to situations in which a federal plaintiff is effectively seeking appellate review of a state court judgment.

"The *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331... is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court

judgments," which Congress has reserved to the Supreme Court, *see* 28 U.S.C. § 1257(a). *McKithen v. Brown*, 481 F.3d 89, 96 (2d Cir. 2007). The doctrine "prohibits federal suits that amount to appeals of state-court judgments. When the state-court judgment is not itself at issue, the doctrine does not prohibit federal suits regarding the same subject matter, or even the same claims, as those presented in the state-court action. *Bolden v. City of Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006).

It is undisputed that this Court's decisions in *Exxon* and *Lance* were intended to narrow the scope of *Rooker-Feldman* so it is not used by the lower courts to override "Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts...." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra*, 544 U.S. at 283. As the Court explained:

> The *Rooker-Feldman* doctrine takes its name from the only two cases in which we have applied this rule to find that a federal district court lacked jurisdiction... Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule... Indeed, during that period, 'this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction.' "*Rooker-Feldman*, we explained, is a narrow doctrine,

> confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.' The doctrine applies only in 'limited circumstances,'... where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court.

Lance v. Dennis, supra, 546 U.S. at 463-66. (citations omitted).

Unfortunately, a number of Circuits, including the Fourth Circuit in the case at bar, are still interpreting *Rooker-Feldman* broadly to bar jurisdiction over federal claims that may effectively reverse the relief granted under state-court judgments, but are not, in substance, appeals of the judgments. When the courts apply a broad interpretation of *Rooker-Feldman* they deny plaintiffs a federal forum for the alleged deprivation of their federal rights. *Powers v. Hamilton County Pub. Defender Comm'n*, 2007 U.S. App. LEXIS 20607 (6th Cir. 2007). This is especially problematic in the civil rights arena where numerous cases against state officials who have allegedly violated the constitutional rights of individuals have been dismissed without the federal courts reaching the merits of their complaints.

II. THE "INEXTRICABLY INTERTWINED" ANALYSIS HAS BEEN BROADLY APPLIED BY SOME CIRCUITS TO BAR JURISDICTION OVER FEDERAL CLAIMS THAT HAVE NOT BEEN ADJUDICATED IN STATE COURT AND DO NOT SEEK REJECTION OF A STATE-COURT JUDGMENT ON THE MERITS

Contrary to this Court's mandate, the Fifth, Ninth, and Tenth Circuits, and the Fourth Circuit in this case, have applied a broad interpretation of the *Rooker-Feldman* doctrine to support dismissal of federal claims which they deem "inextricably intertwined" with the issues decided in a state-court case.

The Fifth Circuit has recently conflated its broad interpretation of the inextricably intertwined test with preclusion principles. See *Riley v. La. State Bar Ass'n*, 214 Fed. Appx. 456 (5th Cir. 2007), where the court held:

> ...plaintiff's complaint "falls under the aegis of *Rooker-Feldman* because it raises issues 'inextricably intertwined' with a state court judgment, such that the district court was 'in essence being called upon to review the state-court decision,' and if civil rights were violated, "federal courts lack jurisdiction over claims that could have been, but were not raised in state court."

Id. at 459 (citations omitted). It is not sufficient, however, to bar jurisdiction under *Rooker-Feldman* if a federal suit simply requires the district court to "review," a state-court decision, but not reject it on the merits. "Merely requiring a federal court to understand what it is that a state court decided does not implicate *Rooker-Feldman*, but rather normal preclusion principles and rules of construction." *Coles v. Granville*, 448 F.3d 853, 859 (6th Cir. 2006). In addition, while preclusion principles may bar a U.S. district court from hearing a federal claim that could have been raised in state court but was not, it is not jurisdictionally barred from doing so. "*Rooker-Feldman* is not simply preclusion by another name." *Lance v. Dennis*, *supra*, 546 U.S. at 466.

In the instant case, the Fourth Circuit, without addressing the fact that the Willners do not challenge the state-court's decision on the merits, barred jurisdiction under *Rooker-Feldman* pursuant to an "inextricably intertwined" analysis similar to that of the Fifth Circuit's. It held that "the *Rooker-Feldman* doctrine prevents plaintiffs from raising issues in federal court that are so 'inextricably intertwined' with a state court judgment that they would require the district court to *review* the state court's ruling." *Willner v. Frey*, 2007 U.S. App. LEXIS 18514 (4th Cir. 2007) (emphasis added).

The Willners' Just Compensation claim, however, does not seek federal court review or rejection of the merits of the state-court case. In fact, the Willners concede, for purposes of this suit, that the state court correctly applied Virginia state law when it held that the Leggetts met the elements of adverse possession

and, as a consequence, the Commonwealth was authorized by state law to take the Willners' title to the Disputed Property and give it to the Leggetts.

If the district court were to hear this case, it may want to review the state court ruling to ensure a taking had occurred to determine whether or not the Willners were due just compensation. A ruling on that issue, however, would have no impact on the state-court's judgment that the Leggetts met the elements of adverse possession and were entitled, under Virginia law, to have the government take the Willners' title to the Disputed Property and give it to them.

This position is consistent with the ruling in *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 217 F.Supp.2d 206 (D.R.I. 2002), *aff'd on other grounds*, 337 F.3d 87 (1st Cir. 2003), which held that *Rooker-Feldman* did not bar jurisdiction over a Takings claim filed by a landowner after he had been deprived of his property by adverse possession in a state-court case. "For the takings claim to succeed it is not necessary to reverse any part of the state court's decision." *Pascoag, supra*, 217 F.Supp.2d at 215. Thus, a federal suit is not "inextricably intertwined" with a state-court case sufficient to bar jurisdiction under *Rooker-Feldman* where the federal plaintiff seeks review, but not rejection, of a state judgment.

The Ninth Circuit has applied an "inextricably intertwined" analysis, without explanation, in the vast majority of its *Rooker-Feldman* dismissals since this Court handed down the decision in *Exxon*. No

doubt its frequent use is due, in part, to its expansive interpretation of the language: "... claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims *would undercut the state ruling....*" *Kucernak v. Sinfield*, 137 Fed. Appx. 59, 60 (9th Cir. 2005) (emphasis added) cert. denied, 546 U.S. 1040 (2005) citing *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) ("... under *Rooker-Feldman*, 'we must pay close attention to the relief sought by the federal-court plaintiff.... Bianchi's claims would still be barred under *Rooker-Feldman* even if the state court had not actually decided his constitutional claims.")

Along the same lines, the Tenth Circuit has explained that, "... the purpose of the term ["inextricably intertwined"] is to highlight that a *challenge to a judgment* is barred even if the claim forming the basis of the challenge was not raised in the state proceedings." *Bolden v. City of Topeka*, 441 F.3d 1129, 1141 (10th Cir. 2006). Whether or not *Rooker-Feldman* applies, therefore, depends upon what the court deems to be a "challenge to a judgment." In *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229 (10th Cir. 2006), the Tenth Circuit advocated an expansive relief-centric approach: "... a party may lose in state court and then raise precisely the same legal issues in federal court, *so long as the relief sought in the federal action would not reverse or undo the relief granted by the state...*" *Id.* at 1237 (emphasis added). *See also Wallin v. Arapahoe County Det. Facility*, 2007 U.S. App. LEXIS 18009, at 15 (10th Cir. 2007) (*Rooker-Feldman* bars claims

where the relief sought in federal court would reverse or undo the relief granted in state court.)

But a federal suit that does no more than challenge the *relief* granted by a state court or "undercuts" a state judgment without challenging the court's legal conclusions, is not, in substance, an appeal and, therefore, not barred by *Rooker-Feldman*. As this Court held in *Exxon*, so long as the federal plaintiff presents an independent claim, "albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction..." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra,* 544 U.S. at 293.

In sharp contrast to the Ninth and Tenth Circuits' interpretations of the "inextricably intertwined" language, and in accordance with the holding in *Exxon*, the Seventh Circuit has held, "while a judgment in federal court... might undermine the state court's rulings..., *Rooker-Feldman* is nevertheless inapplicable." *Kathrein v. McGrath*, 166 Fed. Appx. 858, 863 (7th Cir. 2006) cert. denied, 127 S. Ct. 67 (U.S. 2006). *See also GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (recognizing that federal jurisdiction exists even over an independent claim that incidentally denies a legal conclusion that a state court has reached).

Recognizing that "[t]he 'inextricably intertwined' language from *Feldman* led lower federal courts... to apply *Rooker-Feldman* too broadly," *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 87 (2d Cir. 2005), the Second Circuit has also held that "a

plaintiff who seeks in federal court a result opposed to the one he achieved in state court does not, for that reason alone, run afoul of *Rooker-Feldman*." *Id.* at 87. The court concluded that "the phrase 'inextricably intertwined' has no independent content. It is simply a descriptive label attached to claims that meet the requirements outlined in *Exxon Mobil*." *Id.*

Even the Tenth Circuit has held that a federal court "is not conducting appellate review" where a plaintiff is not asking the court to review a state court's rulings to determine whether they were legally sound, "regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment. In this [situation] the conflict between the two judgments is to be resolved under preclusion doctrine, not *Rooker-Feldman*." *Bolden v. City of Topeka, supra,* 441 F.3d at 1143. See also *Wideman v. Colorado*, 2007 U.S. App. LEXIS 23086 (10th Cir. 2007) (*Rooker-Feldman* only bars jurisdiction over cases where "success in the federal court would require overturning the state court decision..."). These decisions, however, appear to contradict the Tenth Circuit's own ruling in *Mo's Express, supra*, or the court intended to expand the doctrine's reach by creating an exception to the rule, *i.e.*, *Rooker-Feldman* is inapplicable where a federal suit does not seek to overturn a state court decision, *unless the relief sought in federal court would undo the relief granted in state court.*

Similarly, in the present case, the Fourth Circuit's ruling either contradicts or creates an exception to its prior decisions in *Washington v.*

Wilmore, 407 F.3d 274 (4th Cir. 2005) and *Davani v. Va. DOT*, 434 F.3d 712, 714 (4th Cir. 2006), which properly limited *Rooker-Feldman*'s reach. The Fourth Circuit's application of the "inextricably intertwined" analysis in the present case contradicts its pronouncement in *Davani v. Va. DOT*, *supra*, where it held that the "inextricably intertwined" language "does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion." *Id.*, 434 F.3d at 719. Where the inextricably intertwined test does nothing more than state a conclusion, the court erred in relying on it to dismiss the Willners' claim.

In *Washington v. Wilmore*, *supra*, the Fourth Circuit applied an appropriately narrow interpretation to overrule a dismissal on *Rooker-Feldman* grounds: "The 'inextricably intertwined' prong of the doctrine bars a claim that was not actually decided by the state court but where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." *Washington v. Wilmore*, *supra*, 407 F.3d at 279. Thus, in the present case, not only did the Fourth Circuit ignore the fact that the Willners' federal claim did not seek a determination that the state court wrongly decided the issues before it, the Fourth Circuit also either ignored its own precedent or created an exception to its *Rooker-Feldman* test, by applying it to a claim that did not challenge the state-court judgment on the merits.

Either way, the Fourth Circuits' "inextricably intertwined" analysis is overly broad in that it bars

jurisdiction over a claim which requires a federal court to "review" a state-court case, but does not require "rejection" of the state judgment on the merits. This interpretation contravenes this Court's rulings in *Exxon* and *Lance* and should be overturned.

III. SEVERAL CIRCUITS REJECT OR NARROWLY APPLY THE "INEXTRICABLY INTERTWINED" ANALYSIS

Post-*Exxon* some Circuits narrowly apply the "inextricably intertwined" analysis, if they apply it at all, while the Sixth Circuit has expressly abandoned it. See *Pittman v. Cuyahoga County Dep't of Children & Family Servs.*, 2007 U.S. App. LEXIS 17388, 12 (6th Cir. 2007) ("Even though pre-*Exxon Rooker-Feldman* analysis employed the "inextricably intertwined" analysis... we have since abandoned [it].") (citations omitted).

In a recent opinion, the Third Circuit also indicated that the "inextricably intertwined" analysis was no longer valid: "...the *Exxon* Court noted but did not discuss "inextricably intertwined," relegating *Feldman*'s use of that phrase to a mere 'expression....' There is little reason to believe that 'inextricably intertwined' after *Exxon* does anything more than state a conclusion or describe a claim that meets the requirements of *Exxon*." *E. Hill Synagogue v. City of Englewood, supra*, 2007 U.S. App. LEXIS 17108, 6-7 (citation omitted). In *E. Hill Synagogue* a religious not-for-profit corporation filed suit against a New Jersey city and its planning

board, alleging that a board resolution violated its federal rights. The district court found that the *Rooker-Feldman* doctrine applied and dismissed the suit for lack of subject matter jurisdiction. "In the District Court's view, granting relief to East Hill, were the Planning Board's resolution found to violate the Constitution or federal law - an issue inextricably intertwined with what was before the Planning Board - would necessarily void the state court's conclusion." *Id.* at 3-4. The 3rd Circuit, applying *Exxon*'s *Rooker-Feldman* analysis reversed.

> Clearly, East Hill was a state court "loser" and clearly, too, it lost before the proceedings before the District Court commenced. But the injury complained of is not a legal injury caused by a state court judgment, much less a state court judgment [on plaintiffs' constitutional claims]. Rather, at bottom, the injury complained of is the injury caused by the Planning Board when it [made a determination which] the state court merely accepted but neither actually litigated nor even analyzed as [a federal claim].

Id. at 5-6. Similarly, in the present case, the Willners' complain of an injury caused by the Commonwealth when it determined to deny the Willners' compensation, a determination that was "neither actually litigated nor even analyzed" by the state court.

While the Third Circuit noted that, "[t]he District Court did not find it necessary to reach the issue of whether the federal claims had been actually litigated in state court...," *Id.*, in an earlier decision, the Third Circuit had held that "...where a state action does not reach the merits of a plaintiff's claims, then *Rooker-Feldman* does not deprive the federal court of jurisdiction." *Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir. 1998). This is how the "review and rejection" element of the *Rooker-Feldman* test should be interpreted because it truly describes a case that, in substance, would be an appeal of a state-court judgment. It also comports with Justice Marshall's interpretation of the "inextricably intertwined" analysis as explained in his concurrence in *Pennzoil v. Texas*, 481 U.S. 1 (1987):

> While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

Id., 481 U.S. at 25 (citation omitted). One commentator also strongly endorses this issues-based analysis:

> My thesis is that the *Rooker-Feldman* doctrine can claim jurisdictional status

> only in the very narrow situations in which litigants ask the federal courts to rehear issues identical to those on which they have already obtained state court decisions or, in other words, those situations in which an appeal would lie.

74 Notre Dame L. Rev. 1175, 1179 (1999). Similarly, in *Fairfax I* an appeal of the Willners' Just Compensation claim did not lie because the claim did not become ripe until well after the judgment was final. Thus, *Rooker-Feldman* does not apply because the federal district court could not have usurped appellate review jurisdiction over an inchoate claim which the U.S. Supreme Court itself would not have heard on appeal of the judgment in *Fairfax I.*

The Eighth Circuit has employed a similar analysis: "... the *Rooker-Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits... [For Rooker-Feldman to apply] a state court need only indicate it has considered, reached the merits, and rejected the federal claims in order for that doctrine to apply." *Simes v. Huckabee,* 354 F.3d 823, 830 (8th Cir. 2004). The Eleventh Circuit is also in this camp. See *Alyshah v. United States,* 2007 U.S. App. LEXIS 17601, 5-6 (11th Cir. 2007) ("A federal claim is inextricably intertwined with a state court judgment if the federal claims succeed only to the extent that the state court wrongly decided the issues before it and, if so, whether the plaintiffs had a reasonable opportunity to present their federal claims in the state court proceedings.") (citation omitted). So too

the Seventh Circuit. See *Mannix v. Machnik*, 2007 U.S. App. LEXIS 16144 (7th Cir. 2007) ("The core meaning of that doctrine, as the Court stressed in [*Lance* and *Exxon*], is that federal district courts cannot review the merits of decisions made by state courts in civil litigation.")

The decisions in *Rooker* and *Feldman* also support an interpretation of the "review and rejection" prong of *Exxon*'s *Rooker-Feldman* test to mean review and rejection of a state-court judgment on the merits. In *Rooker*, the state court loser filed a bill in equity in federal court to have a state–court judgment overturned on the grounds that it did not follow precedent. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923).

The *Rooker* Court concluded that the district court did not have jurisdiction to hear the claim:

> ... the judgment was rendered in a cause wherein the circuit court had jurisdiction . . .; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it

> open to reversal or modification in an appropriate and timely appellate proceeding.

Id. (emphasis added).

In *Feldman*, the state court losers also attacked the validity of the state court's rulings, arguing that the "state" court (the District of Columbia Court of Appeals) had "acted arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions...." *D.C. Court of Appeals v. Feldman*, *supra*, 460 U.S. at 486.

Thus, in both *Rooker* and *Feldman* the federal plaintiffs challenged the state-court judgments on the merits and, therefore, their federal suits were barred because they were, in effect, appeals of state-court judgments.

IV. *ROOKER-FELDMAN* DOES NOT BAR JURISDICTION OVER A FEDERAL CLAIM THAT SEEKS TO EFFECTIVELY UNDO THE RELIEF GRANTED IN A STATE-COURT CASE WITHOUT SEEKING REJECTION OF THE STATE-COURT JUDGMENT ON THE MERITS

In reaching its decision in the present case, the Fourth Circuit focused on the "injury" prong of *Exxon*'s *Rooker-Feldman* test ("complaining of injuries caused by state court judgments") to supplement its inextricably intertwined analysis and equated rejection of the relief granted by the state

court with rejection of the state-court's judgment. It held:

> ... the key inquiry is not whether the state court ruled on the precise issue raised in federal court, but whether the "state-court loser who files suit in federal court seeks redress for an injury caused by the state-court decision itself... the relief requested, an injunction ordering Frey to remove the state court's final order from the county's land records, leaves little doubt that the Willners want the district court to reverse the state court's judgment.

Willner v. Frey, 2007 U.S. App. LEXIS 18514 at 7 (4th Cir. 2007). The Willners, however, do not seek to reverse the state court's judgment on the merits; they simply seek to protect their constitutional rights, which were violated after the state judgment became final. When the Commonwealth refused to compensate them for the taking of their title to the Disputed Property, they sought to effectively retrieve it by having the state-court order removed from the land records. By ruling that *Rooker-Feldman* bars jurisdiction based on the fact that the Willners' federal claim seeks to retrieve their title to land, the Fourth Circuit improperly equates the relief granted by a state court with its judgment on the merits.

By shifting the analysis away from whether or not the Willners challenge the state court's decision on the merits, to whether or not they seek to undo an

injury attributable to the state-court judgment, the Fourth Circuit's analysis moves away from the heart of the issue – whether the Willners' Just Compensation claim is, in substance, an appeal of the state-court's judgment. It is not. The Willners complain of no error in the state court's ruling that the Leggetts met the elements of adverse possession. They also do not claim that the court erred when it ruled that according to state law, the Commonwealth was authorized to take the Willners' title to the Disputed Property and give it to the Leggetts. Thus, the Willners do not seek review and rejection of the state judgment on the merits.

They also do not complain of an injury caused by the state-court judgment itself. They complain instead of the injury caused by the Commonwealth's subsequent denial of compensation.

> The Takings Clause does not prohibit the government from taking private property; it prohibits the government from taking private property without just compensation. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985). A takings claim is not ripe for review unless a property owner is denied just compensation. *Id.* ... see also *Eide v. Sarasota County*, 908 F.2d 716, 721 (11th Cir. 1990) ("[A] Fifth Amendment just compensation claim is not ripe until the landowner has pursued the available state procedures to obtain just compensation."). Under this reasoning,

> "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Williamson*, 473 U.S. at 195.

Coles v. Granville, 448 F.3d 853, 860-861 (6th Cir. 2006).

Thus, the Willners had no Just Compensation claim when the Commonwealth took their property pursuant to the state-court judgment. Instead, the Willners were compelled to seek just compensation, which they did using the appropriate procedure - filing an inverse condemnation suit. When the Commonwealth refused the Willners' demand, their Just Compensation claim became ripe and they timely and properly filed suit in federal district court seeking relief from the violation of their federal constitutional rights.

Thus, while the "taking" of the Willners' property in the first instance was legal, the "keeping" of the Willners' property after the Commonwealth refused to provide compensation is illegal. Similarly, it was not the filing of the order in the land records by Frey that "injured" the Willners in a constitutional sense, it was his refusal to remove the order once the

Commonwealth denied them compensation, which is causing them injury today.[3]

While several other Circuits have focused on the injury prong of *Exxon*'s *Rooker-Feldman* analysis, their interpretations are much narrower than that applied by the Fourth Circuit in this case. In *Pittman v. Cuyahoga County Dep't of Children & Family Servs., supra*, the county department of family services ("CCDCFS") filed a motion in juvenile court for temporary custody of a father's child without considering the possibility of seeking custody for the father. The juvenile court awarded custody of the child to his great aunt and uncle. While fighting for custody in the state courts, the father sued the CCDCFS in federal court claiming it violated his Fourteenth Amendment due process rights. The district court held that *Rooker-Feldman*

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[3] Mr. Frey's act of maintaining an illegal order among the county land records represents a cloud on the Willners' title, thereby depriving them of a "significant interest requiring due process." See *Foltz v. St. Louis & S.F.R. Co.*, 60 Fed. 316, 320 (8th Cir. 1894) (judgment rendered under unconstitutional law is void); *Ambler v. Leach*, 15 W. Va. 677, 696 (W. Va. 1879)(void judgment is cloud upon title of real estate). *Connecticut v. Doehr*, 501 U.S. 1, 11 (1991) (attachment resulting in cloud on title to property affects significant interest requiring due process); *Terranova v. AVCO Financial Services, Inc.*, 396 F.Supp. 1402, 1407 (D.Vt. 1975) (attachment "impairs the market value and marketability or mortgageability of the real estate [and] cannot be viewed as 'insignificant' deprivations in a constitutional sense."). Furthermore, continuing to maintain the order in the land records after the Commonwealth denied the Willners compensation is not comparable to a judicial act – no court has told Frey to continue to maintain the order in the land records after it became illegal to do so.

deprived it of subject matter jurisdiction, but the Sixth Circuit reversed.

In determining that the federal case was not, in substance, an appeal of the state court judgment, the Sixth Circuit opined:

> In the wake of *Exxon*, this circuit has tightened the scope of *Rooker-Feldman*... In formulating a cogent post-*Exxon* analysis, we have distinguished between plaintiffs who bring an impermissible attack on a state court judgment -- situations in which *Rooker-Feldman* applies -- and plaintiffs who assert independent claims before the district court -- situations in which *Rooker-Feldman* does not apply... In delineating this distinction, we noted: The inquiry [focuses on] the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim...

Pittman, supra, 2007 U.S. App. LEXIS 17388 at 6-7 (citations omitted).

The main difference between the Sixth Circuit's interpretation of the injury clause and the Fourth Circuit's in this case, is the express inapplicability of *Rooker-Feldman* when a federal plaintiff raises an independent claim of injury caused by a third party's actions and not by the state-court judgment itself. In the present case, there certainly is "some other source of injury, such as a third party's actions." The Commonwealth was not a party in *Fairfax I* and its subsequent denial of compensation formed the basis for the Willners' Just Compensation claim, not the taking of their property pursuant to the state-court judgment.

The First and Second Circuits have similarly interpreted the "injury" prong of the *Rooker-Feldman* test: *Francis v. City of New York*, 197 Fed. Appx. 26, 29 (2d Cir. 2006) ("Appellants have not petitioned the federal court to undo the state court's [decision]; rather, they have asserted an independent claim."); *Davison v. Gov't of P.R. - P.R. Firefighters Corps*, 471 F.3d 220, 222-223 (1st Cir. 2006) ("... the lower courts cannot rely on *Rooker-Feldman* to dismiss a case unless, *inter alia*, the federal plaintiff seeks redress of an injury caused by an allegedly erroneous state court decision; if the plaintiff alleges a constitutional violation by an adverse party independent of the injury caused by the state court judgment, the doctrine does not bar jurisdiction.")

In these Circuits, dismissal of the Willners' claim under *Rooker-Feldman* would have been reversed. In fact, if the Fourth Circuit had followed its own precedent or had not created an exception to its

injury-based *Rooker-Feldman* test, it too would have reversed the district court's dismissal of the Willners' suit. The Fourth Circuit in *Davani* recognized that *Rooker-Feldman* did not bar a case that complained of injuries caused by a third party, as opposed to injuries caused by the state-court judgment itself. The court explained that in a pre-*Exxon* case:

> ... we extended the *Rooker-Feldman* doctrine to apply in situations where the plaintiff, after losing in state court, seeks redress for an injury allegedly caused by the defendant's actions. What is more, this expansive view of the *Rooker-Feldman* doctrine carried with it implications for *Feldman*'s "inextricably intertwined" language. To wit, by shifting the focus from an examination of whether the plaintiff challenges the state-court decision itself to whether the plaintiff challenges the defendant's actions, our interpretation of the *Rooker-Feldman* doctrine became, in essence, a jurisdictional doctrine of *res judicata*: state-court losers became precluded from raising claims in federal district court that they had either already raised before the state court or that were so "inextricably intertwined" with the claims they presented to the state court that the federal claims could have been raised in the state proceedings.

Davani v. Va. DOT, supra, 434 F.3d at 717-718. The court concluded, "Because Davani's suit does not challenge the state court's decision, and it instead seeks redress for an injury allegedly caused by Appellees, the *Rooker-Feldman* doctrine does not apply." *Id.* at 713. See also the Fourth Circuit's decision in *Washington v. Wilmore, supra,* where it held that *Rooker-Feldman* did not bar jurisdiction where the plaintiff's "claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights by [defendant]." 407 F.3d at 280.

Furthermore, if a third party's actions are not "produced" by a state-court judgment, the plaintiff's claim of injury is independent of the judgment. *Hoblock v. Albany County Bd. of Elections, supra,* 422 F.3d at 88. In the present case, while the state judgment ordered the Commonwealth to take the Willners' title to the Disputed Property, it did not order the Commonwealth to deny the Willners' just compensation.

If the Fourth Circuit had applied this reasoning to the present case, it would have reversed the district court's dismissal because the Willners' Just Compensation claim does not rest on the state court judgment itself, but rather on the alleged violation of their constitutional rights by the Commonwealth. To reach its erroneous decision in this case the Fourth Circuit essentially created the following exception to the analysis it and other Circuits have applied to the "injury" requirement of *Exxon*'s *Rooker-Feldman* test, *i.e.*, *Rooker-Feldman* does not apply if a plaintiff complains of an injury caused by a

third party and not the state-court judgment itself, *unless plaintiff seeks to undo the relief granted by the state court.* This exception must be rejected because it broadens the scope of *Rooker-Feldman* contrary to this Court's directives in *Exxon* and *Lance* and does not describe what would be, in substance, an appeal.

CONCLUSION

The Circuits are not applying the *Rooker-Feldman* doctrine consistently and individuals whose civil rights are being violated by state officials are suffering the consequences. Some of the Circuits apply an appropriately narrow merits-based approach barring jurisdiction only if a federal plaintiff's claim seeks to adjudicate the merits of a state court case. This is the proper way to interpret the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test because it is the essence of an appeal. Other circuits focus on the "injury" clause to bar jurisdiction where a plaintiff complains of an injury caused by a state-court judgment itself and does not raise an independent claim of injury caused by the actions of a third party. Under either of these approaches, the Willners' claim would not have been dismissed.

Unfortunately, some Circuits, including the Fourth Circuit in this case, interpret *Rooker-Feldman* broadly to bar jurisdiction over federal claims which seek to undercut the relief granted by a state court, even if the federal claim was not adjudicated in state court and does not challenge the state-court judgment on the merits. The problem with this expansive approach is that it ignores the

doctrine's *raison d'etre, i.e.*, preventing federal courts from hearing claims which are, in substance, appeals of state-court judgments. Where a federal suit does not seek to reverse a state court's rulings on the merits, but seeks only to protect an individual's federal rights by effectively undoing the relief granted by a state court applying state law, the plaintiff is not seeking appellate review and, therefore, *Rooker-Feldman* does not bar jurisdiction.

The Willners' federal suit does not effectively seek appellate review of a state-court judgment because the state case did not address their Just Compensation claim – a claim which did not become ripe until the Commonwealth denied them compensation long after the state-court judgment in *Fairfax I* became final. Thus, the Willners do not seek rejection of any issues adjudicated by the state court. Nor do they seek relief from an injury caused by the state court judgment itself because, as a matter of law, the constitutional injury of which they complain was the denial of compensation, not the taking of their property.

This case presents an excellent opportunity for this Court to effectively sever *Feldman* from the *Rooker-Feldman* doctrine, as Justice Stevens suggests, by abandoning the "inextricably intertwined" analysis while also clarifying the "review and rejection" prong of the *Rooker-Feldman* test by defining it to require review and rejection of a state-court's judgment on the merits, not just the relief granted thereunder.

For the reasons stated, the Court should grant the petition.

Respectfully submitted,

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